REMARKS

Claims 13-24 are now pending in this application.

Claim 13 has been amended by deleting reference to hybridizable fragments. Claims 13 also has been amended by adding SEQ ID NOs: 15 and 16. These sequences are similar to SEQ ID NOs:14 and 6 respectively. SEQ ID NO:15 corresponds to SEQ ID NO:14 with the 591 nucleotide intron removed. SEQ ID NO:16 corresponds to SEQ ID NO:6 with the following changes: 1) the first three nucleotides, corresponding to linker DNA, have been removed; 2) the 591 nucleotide intron has been removed; 3) the sequence ends with the genomic sequence "AGATG" (SEQ ID NO:2) instead of the Nco I linker sequence "CCATGG" (SEQ ID NO:6). Support for this can be found in the specification on page 4 at lines 18-25 and on page 21 at lines 15-21, and by comparison of SEQ ID NO:6, which contains linker DNA at the 5' and 3' ends, with the genomic sequence of SEQ ID NO:2. Applicants respectfully submit that one skilled in the art would appreciate that SEQ ID NOs:15 and 16, in which the 591 nucleotide intron has been removed, would retain promoter activity. Thus, no new matter has been added.

Regarding the priority claim, attention is kindly invited to the patent application transmittal letter, a copy of which is attached hereto for convenience. It is clear from the information set forth in box 16 that the specification was to be amended to reference the prior application in the first sentence of the specification. Accordingly, it is respectfully submitted that Applicant has indeed complied with the conditions for receiving the benefit of an earlier filing date under 35 USC §119(e).

Claims 13-28 were rejected under 35 USC §112, first paragraph, as containing subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 13 now recites an isolated nucleic acid fragment having promoter activity wherein said fragment comprises the nucleic acid sequence of SEQ ID NO:6, SEQ ID NO:14, SEQ ID NO:15, or SEQ ID NO:16.

Withdrawal of this ground of rejection is respectfully requested in view of the amendment to claims 13-24.

This ground of rejection for claims 25-28 has been obviated by the cancellation of claims 25-28.

Claims 13-28 were rejected under 35 USC §112, first paragraph, because the specification while being enabling for an isolated nucleic acid fragment having constitutive promoter activity comprising the nucleic acid sequence of SEQ ID NO:6 or of SEQ ID NO:14, as well as for methods of expressing sequences operably linked to said isolated nucleic acid fragments, does not reasonably provide enablement for isolated nucleic acid fragments which can hybridize to SEQ ID NOS:6 or 14 under stringent conditions, or for methods of decreasing the expression of endogenous

genes in plant cells.

Claims 13-24 have been amended to delete reference to hybridization.

Withdrawal of this ground of rejection is respectfully requested in view of the amendment to claims 13-24.

This ground of rejection for claims 25-28 has been obviated by the cancellation of claims 25-28.

Claims 25-28 were rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

This ground of rejection has been obviated by the cancellation of claims 25-28.

It is respectfully submitted that the claims are now in form for allowance which allowance is respectfully solicited.

Please charge any fees or credit any overpayment of fees which are required in connection with the filing of this Response After Final to Deposit Account No. 04-1928 (E. I. du Pont de Nemours and Company).

Respectfully submitted,

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